

Joseph A. Vogel (JV-5533)
KRAVET & VOGEL, LLP
1040 Avenue of the Americas, Suite 1101
New York, New York 10018
Tel. 212-997-7634
Fax: 212-997-7686
E-mail: jvogel@kvnyc.com

*Attorneys for Defendant
JMB Apparel Designer Group, Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X ECF CASE

SHARAGANO HOLDINGS, INC.,

Plaintiff,

Civil Case No.: 07 Civ. 6244 (NRB)

v.

JMB APPAREL DESIGNER GROUP, INC.,

Defendant.

-----X

SUPPLEMENTAL AFFIDAVIT OF BEN CHOY

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BEN CHOY, being duly sworn, deposes and states as follows under penalties of perjury:

1. I am President of JMB Apparel Designer Group, Inc. ("JMB") the named defendant herein and submit this supplemental affidavit to respond to the blatant factual misrepresentations, inaccurate conjecture and false assertions contained in the "Supplemental Affidavit of Jackie Pappas," sworn to on July 26, 2007 (the "Suppl. Affid."), that plaintiff

Sharagano Holdings, Inc. ("SHI") filed electronically on July 27, 2007, a copy of which was served electronically last Friday afternoon and delivered my Federal Express this morning.

2. Ms. Pappas, who styles herself as the public relations and marketing director for SHI, speculates in her supplemental filing that JMB ladies suits that she observed on July 21, 2007 in a Lord & Taylor's store in Paramus, New Jersey, were part of JMB's "Fall 2007 products" – apparently determined solely by her subjective observation of the "look and feel" of such garments (Suppl. Affid., ¶ 4). Ms. Pappas' conjecture is demonstrably false as in fact JMB has not even begun to ship any Fall 2007 line suits to Lord & Taylor, and won't begin doing so until sometime in late August 2007, consistent with the orders that Lord & Taylor has placed for such suits. A copy of Lord & Taylor's Summary Selling Report for JMB Fall Line 2007 purchases is annexed hereto as **Exhibit 12** and confirms that 4 JMB styles from its Fall Line 2007 have been ordered by Lord & Taylor and zero (0) units have shipped to date.

3. Rather, what Ms. Pappas must have observed were left over *Atelier* Spring Line 2007 suits, shipped in March, April and May 2007, almost all of which Lord & Taylor has already begun to mark down and move to its sale racks (a fact that Ms. Pappas conveniently fails to disclose). Annexed hereto as **Exhibit 13** is Lord & Taylor's current selling report for JMB's garments sold the week ending July 22, 2007.

4. This report (exhibit 13) shows the number of JMB garments sold during the week ending July 22, 2007 in all Lord & Taylor stores and the number of JMB garments that are still currently on the Lord & Taylor floors (exclusive of those styles delivered earlier which are already on the store's liquidation racks). The report confirms that of the seven JMB styles sold to Lord & Taylor, six have already been marked down from their original selling prices of \$240.00/\$220.00 to reduced selling prices of \$143.99/\$131.99, respectively. The report also

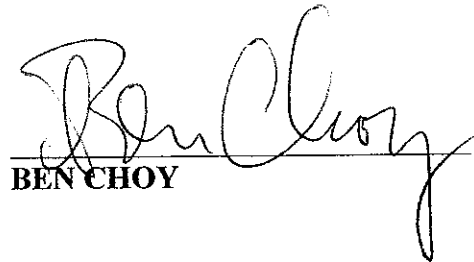
shows that all of these styles were shipped by JMB in March, April or May, 2007. One style is a re-order shipped on July 10, 2007 of a garment originally shipped in April 2007 (this style is not yet marked down). All of these garments are JMB's *Atelier* brand suits and the report lists them as such.

5. Perhaps what confused Ms. Pappas in her thinking and caused her to speculate that the garments she observed on July 21, 2007 are part of JMB's Fall 2007 line suits, when in fact they were still part of JMB's Spring Line 2007, is the fact that JMB routinely uses 4-season weight and look fabrics for all of its *Atelier* suits, and thus it is understandable that someone more familiar with lesser quality garments might in fact confuse one for the other, particularly when such person has no knowledge whatsoever of JMB's business or product line.

6. However, what is most revealing in Ms. Pappas' Suppl. Affid. is the fact that she, too, cannot state with certainty what the illegible script says on the label that she observed, as the very best that she can say is that it "appeared to say 'Sharagano' in script writing followed by the name 'Atelier'...." (Suppl. Affid., ¶ 2; emphasis added). As made clear in my prior affidavit sworn to on July 13, 2007, JMB does not use the word "Sharagano" on any of its *Atelier* garments, and has not done so since prior to February 2006 when it had the right to do so under its License Agreement. As my prior affidavit also made clear, JMB's illegible script design does not and was never intended to say or suggest the word Sharagano.

7. In light of the above, and for the reasons stated in my prior affidavit sworn to on July 13, 2007, SHI's order to show cause should not be signed and JMB respectfully urges this Court to decline SHI's request for injunctive relief. Because of the utter lack of any demonstrated proof supporting plaintiff's claims – as highlighted by the demonstrably false

supplemental affidavit of Jackie Pappas – JMB respectfully renews its request that this Court consider awarding JMB its costs and fees in responding to SHI's baseless accusations.


BEN CHOY

Sworn to before me this
30th day of July, 2007


Notary Public

JOSEPH A. VOGEL
Notary Public, State of New York
No. 02VO4756050
Qualified in Nassau County
Commission Expires June 30, 20 11

Exhibit 12

REPORTID MFS310A
PROGRAMMFS310 LV078
PGM05/1007 8:53:00
RUN07/22/07 05:21:07
OPTION 2CC WITHIN MFG

DEPT 596 BRIDGE SUITS

LORD AND TAYLOR NEW
WEEKLY STYLE SUMMARY REPORT
WEEK024 ENDING 07/21/2007

GMM 025 025-RODBELL LIZ
DMM 027 027-MCCABE-OPEN
BYR 271 271-COHN-GREGORY

MID	CL	MFG	#	SKN	DESCRIPTION	CST	ORG	OWN	CUR	LOW	RECEIPTS				SALES					ON HAND		CUM	RTN
											FST	LST	AGE	TOT	MTDU	MTD\$	WK2	WK1	CURU	CUR\$	SL%		

MFG 104 - ATELIER CC FQ - MAY 2007

CC	UNIT TOTALS - MKD-TOTS=	182													70	12.3	36.6	21	2.4	4	11	10	1.2	7.4	17.5	8
	DOLLARTOTALS (X1000)	44.2																								

MFG 104 - ATELIER CC FU - CC ADDED BY BPW

14	104	101234	5260389	BLK 28 SM DTL SK	85.00	220.00	220.00	220.00	220.00	220.00	0	0	0	0												
10	104	109221	5260351	BLK 28 PS WSTOT	90.00	240.00	240.00	240.00	240.00	240.00	0	0	0	0												
18	104	109245	5260344	BLK 35 SWING JKT	90.00	240.00	240.00	240.00	240.00	240.00	0	0	0	0												
10	104	123212	5260377	CHRL 28 FLP PKT	90.00	240.00	240.00	240.00	240.00	240.00	0	0	0	0												
CC	UNIT TOTALS - REG-TOTS=														81	18.5	47.4	11	2.5	2	4	7	1.8	8.0	294	24
	DOLLARTOTALS (X1000)																									
MFG	UNIT TOTALS - REGULAR														207	34.4	43.1	38	4.5	10	21	17	2.0	6.0	314	34
	DOLLARTOTALS (X1000)																									
MFG	UNIT TOTALS - MARKDOWN														208	52.9	44.3	48	6.8	13	25	24	3.6	6.0	314	58
	DOLLARTOTALS (X1000)																									
MFG	UNIT TOTALS - COMBINED																									
	DOLLARTOTALS (X1000)																									

← NUMBER OF UNITS ON ORDER ("OO")

← # OF UNITS RECEIVED TO DATE

← LISTED SELLING PRICE

Exhibit 13

MTC 104 - AVESTER		CC		- NO COORDINATE CODE	
10	104	4411	5107875	SEP INV 07 BS	72.00 143.54 143.54 143.54 143.54 08/15 07/09 1
CC		UNIT TOTALS - REG-PTGS = COLLAR TOTALS (\$1000)		3 3	

MTC 104 - AVESTER		CC		- APRIL 2007	
24	104	101246	5117882	BIA XXI DAB	192
CC		UNIT TOTALS - REG-PTGS = COLLAR TOTALS (\$1000)		192 46.1	
10	104	102113	4664712	BIA FLP PT7 PT	96
10	104	122203	4664256	GRV MGT DB PT	96
14	104	156216	4664284	TRK LB DTL PTD B	96
CC		UNIT TOTALS - REG-PTGS = COLLAR TOTALS (\$1000)		258 67.2	
CC		UNIT TOTALS - COMBINED COLLAR TOTALS (\$1000)		480 112.3	

MTC 104 - AVESTER		CC		- MAY 2007	
10	104	105183	4920275	BIA 2B MCK 2M PT	96
14	104	155216	451286	FM 2B DOL 2PM BK	96

← TOTAL SOLD WEEK ENDING 7/22/07

← TOTAL SOLD TO DATE

← TOTAL DELIVERED

← DELIVERY DATES

← CURRENT SELLING PRICE

← ORIGINAL PRICE

← COST

* RE-ORDER